

The Honorable Marc A. Barreca
Chapter 13
Location: Seattle
Hearing Date: March 24, 2011
Hearing time: 9:30 AM

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON**

Chapter 13
Case No. 09-10283-MLB

Adv. No. 10-01203-MLB

**STATEMENT OF ISSUES AND
CONTROVERTED FACTS FILED
IN RESPONSE TO MOTION FOR
SUMMARY JUDGMENT**

Defendant Litton Loan Servicing, LP, agent for HSBC Bank, the indenture trustee of the original lender Fieldstone Mortgage Investment Trust (“Creditor” or “Defendant”) submits the following Statement of Issues and controverted facts in support of its Response to Motion for Summary Judgment.

ROUTH CRABTREE OLSEN, P.S.
A Law Firm and Professional Services Corporation
13555 SE 136th Street, Suite 300
Bellevue, Washington 98006
Telephone (425) 458-2121
Facsimile (425) 458-2131

1 **I. STATEMENT OF ISSUES**

2 Whether an adversary action should proceed to trial where there are controverted
3 issues of material fact in an adversary proceeding that has been commenced alleging forgery
4 of a Plaintiff's signature on loan documents, where the Plaintiff has signed a Signature
5 Affidavit attesting to the correctness of the name that was allegedly forged?

6 Whether a Plaintiff can invalidate a lien on summary judgment in an adversary
7 proceeding where the basis of the motion for summary judgment is that the Defendant's
8 proof of claim was disallowed on the Plaintiffs' objection to claim because a copy of the
9 underlying Promissory Note was not attached to the Proof of Claim filed in the underlying
10 bankruptcy case?

11 Whether a secured lien that would otherwise pass through bankruptcy can be avoided
12 based on an order that disallowed the claim for failure to comply with Fed. R. Bankr. P.
13 3001(c) where an adversary proceeding has been filed and there are controverted facts as to
14 the validity of the Plaintiff's signature on the writing that established the debt?

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16 **II. STATEMENT OF FACTS**

17 On or about December 8, 2005, Darlene Gay Blendheim and Robert S. Blendheim
18 ("Plaintiffs"), executed and delivered a Promissory Note (the "Note") in favor of Fieldstone
19 Mortgage Company in the original principal amount of \$328,000.00. *See* Declaration of
20 Christopher Spradling ("Spradling Decl."), at para. 3. Fieldstone Mortgage Company
21 indorsed the Note in blank and delivered it to Litton Loan Servicing, the servicing agent for
22 HSBC Bank USA, National Association, as Indenture Trustee of the Fieldstone Mortgage
23 Investment Trust, Series 2006-1. Litton Loan Servicing specially indorsed the Note to

1 HSBC Bank USA, National Association, as Indenture Trustee of the Fieldstone Mortgage
2 Investment Trust, Series 2006-1. *See* Spradling Decl., para. 4.

3 The Plaintiffs' obligations under Note were secured by a Deed of Trust ("Deed")
4 encumbering real property commonly described as 3717 Beach Drive SW #315 Seattle, WA
5 98116 ('Property'). The Deed was recorded on December 15, 2005 under King County
6 Recording No. 20051215002809. The Deed named Mortgage Electronic Registration
7 Systems, Inc. ("MERS"), as beneficiary, solely as nominee for the lender, Fieldstone
8 Mortgage Company. *See* Spradling Decl., par. 5.

9 In connection with the execution of the Note and Deed of Trust, Plaintiffs executed a
10 signature affidavit on December 8, 2005. The Signature Affidavit affirms the full legal name
11 of Plaintiff Robert S. Blendheim, Jr. and sets forth an alternative name of Robert Blendheim.
12 *See* Spradling Decl., para. 6. In connection with executing the loan documents, Mr.
13 Blendheim acknowledged in the Signature Affidavit that the signatures on the Note and Deed
14 of Trust reflected his legal signature, and further acknowledged that his full legal name is
15 "Robert S. Blendheim, Jr." as signed on the Note and Deed of Trust.

16 Subsequently, on January 19, 2007, MERS executed an Assignment of Deed of Trust
17 ("Assignment"). The Assignment assigned the beneficial interest under the Deed to HSBC
18 Bank USA, National Association, as Indenture Trustee for Fieldstone Mortgage Investment
19 Trust (FMIT) Series 2006-1. The Assignment was recorded on January 26, 2007 under King
20 County Recording No. 20070126002147. *See* Spradling Decl. para. 7.

21 On January 15, 2009, Plaintiff filed for protection under Title 11, chapter 13 of the
22 United States Code under cause number 09-10283-KAO (now captioned 09-10283-MLB) in
23 the above listed court. The Plaintiffs listed the debt owing to Defendant in their schedules

1 and Chapter 13 Plan and list the Defendant to which the debt is owed as Litton Loan
2 Servicing.

3 On January 28, 2009, Litton Loan Servicing filed a secured Proof of Claim, assigned
4 Claim No. 1, in the amount of \$419,498.75. *See* Claim no. 1.

5 On October 10, 2009, Plaintiffs filed an Objection to Claim #1 of Litton Loan
6 Servicing (the "Objection"). *See* Docket no. 44 The Objection cited Rule 3001 of the
7 Federal Rules of Bankruptcy Procedure for the proposition that "[w]hen a claim, or an
8 interest in property of the debtor securing the claim, is based on a writing, the original or a
9 duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a
10 statement of the circumstances of the loss or destruction shall be filed with the claim.' . . .
11 while Litton has attached to its proof of claim a copy of the deed of trust as evidence of the
12 security interest in Plaintiffs' real property, it has failed to include a copy of the Promissory
13 Note signed by the Plaintiffs – the very contract that would evidence the Plaintiffs' obligation
14 to pay." *See* Objection, p. 3, lines 1-26.

15 No counsel for Litton Loan Servicing had appeared in the case as of the date the
16 Objection to Claim was filed.

17 On October 27, 2009, counsel James MaGee on behalf of Litton Loan Servicing filed
18 a Motion for Adequate Protection Disbursements. *See* Docket no. 53. This was the first
19 appearance of counsel for Litton Loan Servicing.

20 On October 27, 2009, counsel for Litton Loan Servicing filed a Supplemental Filing
21 of the Promissory Note in support of the Motion for Adequate Protection Disbursements.

22 On November 9, 2009, Plaintiffs submitted a Certificate of No Objections as to the
23 Objection to Claim.

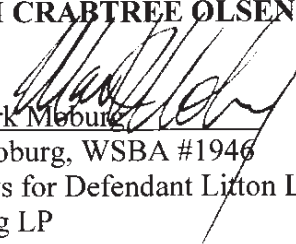
1 On November 18, 2009, Judge Overstreet signed an Order disallowing Claim No. 1.
2 See Docket no. 74.

3 On April 8, 2009, the above-captioned adversary proceeding was commenced,
4 challenging, inter alia, the enforceability of the Note upon which Defendant's claim is based
5 and asserting that the signatures on the loan documents were forged. The Plaintiffs allege
6 that Mr. Blendheim's signature is a forgery because it includes a "Jr." According to the
7 Signature Affidavit, Mr. Blendheim agreed that he would sign the loan documents with "Jr."

8 On May 10, 2009 an Answer to the Complaint was filed, controverting the allegations
9 set forth in the Complaint.

10 DATED this 17th day of March, 2010.

11 **ROUTH CRABTREE OLSEN, P.S.**

12 
13 /s/ Mark Moburg
14 Mark Moburg, WSBA #1946
15 Attorneys for Defendant Lixton Loan
16 Servicing LP
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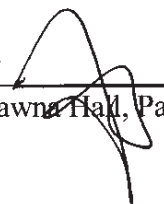
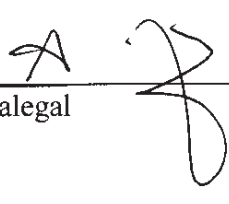
Certificate of Service

I certify under penalty of perjury under the laws of the State of Washington that I mailed a true and correct copy of the **Statement of Issues and Controverted Facts**, postage pre-paid, regular first class mail on the 18th day of May, 2010, to the following parties:

Attorneys for Plaintiff

Taryn M. Darling Hill
Resolve Legal PLLC
720 Olive Way, Suite 1000
Seattle, WA 98101

DATED this 18th day of March, 2010.

/s/   ANTHONY GRAVES
Shawn Hall, Paralegal